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to do justly, to love mercy, and to walk humbly with God Micah 6:8

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2008 DEC 23 PM 12:11

SOLICITOR GENERAL
APACHE COUNTY, SUPERIOR COURT

IN THE SUPERIOR COURT, STATE OF ARIZONA
APACHE COUNTY

In the Matter of)	
)	Case No. JV 2008-065
Christian Ryan Romero)	
)	Motion to Suppress- Illegal Warrant
)	[Hearing Requested ½ day needed.]
)	
A person under 18 years)	
)	

The Juvenile, Christian Romero, moves to suppress all evidence taken
from his home

Detective Lucas Rodriquez, [LR] I went in, he-e[Judge
Gunnels], sat down, he goes whadda you got? And I, explained
to him what I got, and, he looked at the search warrant, read my
affidavit and everything, so-so raise yer right hand, I raised my
right hand and, he says (unk) I went no, sir, I said, *okay*, thank
you And he signed it

* * * *

BB Did he, um, indicate to *you*. that he *knew*, Vincent Romero?

LR Yes (unk) he did

* * * *

Mr Ben Brewer[BB] Um, and, do you know *how* he [Judge
Gunnels] knew him? Did he talk to you about *that* at all?

[LR] No, later, now, you know, he[Judge Gunnels], says "I
knew him, and that's why he can't do, my search warrants

anymore”, he says “I knew him, and I’m not gonna (sic), I’m gonna(sic) [r]e[x]cuse myself ”

BB Okay A-and he indicated to you that he believed, he should take him, that he shouldn’t, *sign* them?

LR Yes

BB Did he say *why*?

LR [Because] he was a friend with those

BB Friend of, both

LR Of Vincent

(Portion of Transcript of an interview with Det Lucas Rodriguez, St Johns Police Department)

The Juvenile, through Counsel and pursuant to the 4th and 14th amendments to the U S Constitution and Article 2 § 8 of the Arizona constitution moves to suppress the fruits of the illegal search conducted at the Juvenile’s home as a result of the initial warrant signed by St Johns’ Magistrate, the Honorable Butch Gunnels This warrant violates due process and the constitutions in that the magistrate is not a magistrate that is neutral and detached, having admitted to a relationship with both the victim and the Juvenile

A search warrant was executed at the home of Christian Romero shortly after the bodies of Mr Romero and Mr Romans were discovered That warrant secured for the government, a weapon, spent cartridges, blood samples, photographs, and most of the forensic material collected by the state and its various agents That warrant is invalid insofar as the magistrate that signed the warrant was friends with the victim and knew the Juvenile, and as a result of that relationship, relinquished his neutral and detached role e

under the 4th and 14th amendments to the United States' Constitution and Article 2 § 8 of the Arizona Constitution. Moreover, as a result of the violation of due process and the Constitutions here, neither good faith nor inevitable discovery are available to the government to save their evidence.

The 4th Amendment of the US Constitution and Article 2 § 8 of the Arizona Constitution, require that a neutral and detached magistrate issue a warrant. *Lo-Ji Sales, Inc v New York*, 442 U S 319, 327, 99 S Ct 2319, 2324, 60 L Ed 2d 920 (1979), *Connally v Georgia* 429 U S 245, 250, 97 S Ct 546, 548, 50 L Ed 2d 444 (1977) (per curiam), *Coolidge v New Hampshire*, 403 U S 443, 449-51, 91 S Ct 2022, 2029-30, 29 L Ed 2d 564 (1971). The Supreme Court has found an impermissible lack of neutrality in cases where the particular magistrate was also involved in law enforcement activities, had a pecuniary interest in the outcome of his decision, or had "wholly abandoned" his judicial role. *US v Heffington*, 952 F 2d 275 C A 9 (Cal), 1991. See Also *McCommon v Mississippi*, 474 U S 984, 106 S Ct 393, 88 L Ed 2d 345 U S , 1985.

A magistrate's neutrality and detachment that causes him to abandon her judicial role may be compromised in one of two ways-either (1) by his or her conduct or (2) by an indicia of partiality. In *Lo-Ji Sales, Inc v New York*, supra, 442 U S 319, 99 S Ct 2319. A judge's personal relationship can be the cause of a finding of abandonment. *State v Edman*, 281 Conn 444, 915 A 2d 857 especially when that relationship involves the victim. *State v Burnam*, 66 Or App 132, 672 P 2d 1366. And the relationship need not be close, only one that would create an "indicia of partiality." *Commonwealth v Brandenburg*, 114 S W 3d 830.

While Arizona has not yet dealt with this particular problem, neither the 4th

Amendment and the 14th amendment would not allow a relationship between the issuing magistrate and the Defendant or the Victim. Here, the magistrate knew not only the victim of the shooting, but also the charged juvenile as well. This renders him unavailable to sign a warrant to search the premises, and his signing creates a circumstance where neither good faith nor inevitable discovery will save the government's evidence. See *Burnham*, supra. In addition, the magistrate was the requesting officer's training officer at the St. Johns Police Department and was his friend. And what makes clear this analysis is the magistrate's reluctance to want to sign further warrants, asking instead that the government find another judicial officer willing to do so.

There is no consent search here, no exigency that would render this search one outside the warrant requirement of either the U.S. Constitution or the Arizona Constitution. In fact, the Arizona Constitution has been construed to give more protection to the home than even the federal constitution. Ariz. Const., art. 2, § 8. *State v. Martin*, 139 Ariz. at 473, 679 P.2d at 496, *State v. Bolt*, 142 Ariz. 260, 264, 689 P.2d 519, 522 - 523 (Ariz., 1984). This was Christian's home, and the law renders the photographic search prior to the issuance of the warrant illegal as well. In addition, both *Martin* and *Bolt* make clear that unlawful entry without exigency or warrant renders the search illegal under Arizona law, as well as federal law. Deputy Quinn was immersed in his photography well before the magistrate committed his violation of the law.

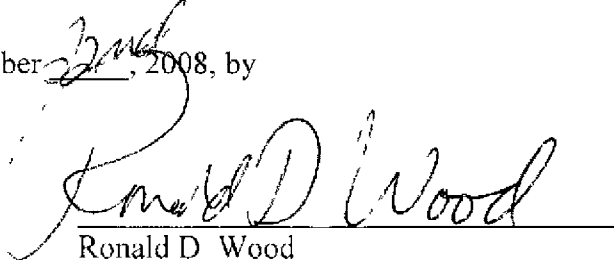
The sum here is that the warrant was unlawfully obtained due to the magistrate's relationship with the victim and the accused. There is no neutral or detached magistrate to check the ardor of law enforcement on the trail of a suspect, real or imagined. As a result, Mr. Romero's constitutional rights were violated, and the remedy is to preclude

the government from using any seized evidence or any evidence that flows from that illegally seized evidence. Unfortunately it also includes all of the evidence collected, all of the photos and videos taken before the warrant was issued, See Martin, supra, and Bolt, supra, as well as all evidence that was collected as a result of that evidence being collected.

The Juvenile would request a hearing and thereafter an order suppressing all evidence seized from the Romero Residence and all evidence seized as a result of subsequent warrants and searches, those being the fruits of this poisonous tree.

If the government objects in a timely manner, in writing, the Juvenile would request a hearing, findings of fact, and conclusions of law.

Respectfully submitted, December 22nd, 2008, by

A handwritten signature in cursive script, reading "Ronald D. Wood", written over a horizontal line.

Ronald D. Wood
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Copies to
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